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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,251	03/08/2001	Andrew Paul Maxwell Salmon	1171/39247/91	5561

7590 12/03/2002

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EXAMINER

FOX, JOHN C

ART UNIT PAPER NUMBER

3753

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/802 251

Applicant(s)

Examiner

Fox

Group Art Unit

3753

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 11/1/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-19 is/are pending in the application.
- Of the above claim(s) 14-19 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-3, 6-7 is/are rejected.
- ☒ Claim(s) 4-5, 8-13 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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This action is responsive to the communication filed November 1, 2002.

Claims 14-19 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to a nonelected invention. Election of Group I, claims 1-13, was made without traverse in Paper No. 10.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-3, 6-7 and 13 are rejected under 35 U.S.C. § 103 as being unpatentable over Donnelly et al (US 5,453,077) in view of Moll et al (US 5,817,003).

Donnelly et al show an incubator with canopy 11 including liquid crystal light shutters 102 for selective darkening the interior of the incubator and a radiant heater 94. Donnelly et al includes a surface 29 for the infant, and a control 120. However,

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Donnelly et al do not include an explicit disclosure of controlling the radiant heater 94 so the infants skin temperature is regulated within a certain range.

Moll et al show an incubator including a radiant heater 56 and controller 200 for controlling the heater 56, among other things, so the skin temperature is maintained at a set point, see column 9, lines 12-16, for example 35° C, +/- 0.3° C. Moll et al use a temperature probe 202 attached to the baby, and control the humidity of the incubator. It would have been obvious for one of ordinary skill in the art to have used such a control system as taught by Moll et al in the incubator of Donnelly et al to desirably keep the infants skin temperature at the desired set point, or range, and to similarly control the humidity of the incubator to provide more comfort for the infant.

Claims 4-5 and 8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The details of claims 4 and 5 are not taught in the Prior Art. There are teachings of radiant heat below an infant support surface, but there is no suggestion in the Prior Art to combine them with an incubator such as that of Donnelly et al.

The Prior Art made of record and not relied upon is considered pertinent to applicant's disclosure.

Serial Number: 09/802251

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Any inquiry concerning this communication should be directed to Examiner Fox at (703) 308-2595 or John.Fox@uspto.gov. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. The fax number for Art Unit 3753 is (703) 308-7765. The Supervisory Primary Examiner for Art Unit 3753 is Michael Buiz who can be reached at (703) 308-2580 or at Michael.Buiz@uspto.gov.



JOHN FOX  
PRIMARY EXAMINER  
ART UNIT 3753

jcf  
November 29, 2002